

Vorträge, Reden und Berichte aus dem Europa-Institut / Nr. 37

herausgegeben

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THE ROLES OF THE HUMAN RIGHTS COMMITTEE

Vortrag vor dem Europa-Institut der Universität des Saarlandes

Saarbrücken, 30. November 1984

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The Roles of the Human Rights Committee

I understand that there was a lecture here by Mr. Tomuschat which also concerned the Human Rights Committee. His topic was broader, he was dealing with the protection of human rights in general and he paid special attention to this Committee, of which he is an old member and I am a new member. My advantage as a new member is that I had studied the work of the Committee from outside as somebody who is interested in human rights, and not only for the last two years, since I have been within the Committee. So, I was able to compare the general impression with the experience of somebody who is a member of the Committee.

As you know, and I shall not dwell on this very long, this Committee is a hybrid body. It is not a United Nations organ, because it was founded by the International Covenant on Civil and Political Rights (Art. 28), and the members of the Committee are elected only by the states that have ratified the Covenant. There are at this moment, I think, exactly 80 state-members of the Covenant, and so this is an organ of these states, and not a UN organ. On the other hand, the Human Rights Committee is closely related to the UN, at least in two ways: One is the provision of Article 36 of the Covenant, which says that the secretarial assistance to the Committee is provided by the Secretary-General of the UN. So, whatever work is done for the Committee, the secretarial work (not in the most common sense, but all the preparations etc.) is done by the UN Secretariat, or to be more precise by the Human Rights Centre. Of course, as students of international organizations, you know that people from the secretariat do influence the work of the international organizations more than is usually suspected. The members of such bodies do meet two or three times a year, but all the preparatory work and all the material they get comes from the secretariat, and of course, there is a certain input from the secretariat, there are certain drafts, there are studies and fact-findings which influence the work of these organs. So, in this sense, this Committee is related to the Secretariat. The other connection with the UN is contained in Article 45 of the Covenant, which says

that the Committee should report annually to the General Assembly of the UN through the Economic and Social Council. The reports of the Committee are published every year as annexes to the official records of the General Assembly, and these reports are discussed in the General Assembly, especially in the Third Committee. During these discussions, it is not only the signatory states who can discuss the report, but also all members of the UN. So, in a sense this Committee is a body which is to a certain extent a UN body, but at the same time it is not strictly a UN organ.

I should like to remind you, and I think Mr. Tomuschat has done the same, that there is even in circles that are supposed to know better a confusion between the Human Rights Committee, which is the body I am speaking about, and the Commission of Human Rights, which is a subsidiary organ of the Economic and Social Council, composed of states. States are elected to the Human Rights Commission, and they send their own representatives which are under instructions. The Committee, however, is composed of 18 independant members who act in their own capacity and are supposed not to be instructed by their governments. Unfortunately, the old idea that in international organizations there could be bodies that are completely independent of states, composed of people who act in their own capacity, who act as independently as possible, proved not to be quite feasible. There has been a tendency from the very beginning to influence the composition, to influence the members by governments. The only vestige of the original plan to have Governments interfere in the composition of independent international organs is with the International Court of Justice. You know that the members of the ICJ are elected from the list which is not proposed by governments but by national groups of the Hague Permanent Arbitration Court, so this is a way to by-pass governments. Later on, now with the UN, it is always so: The members are independent, they cannot be removed, but they are proposed by their governments, which means that they are independent only for four years while they serve, and that if they do not please their governments, they will not be renominated by their governments. This applies even to people who work for the secretariat.

In the beginning, it was supposed the Secretary-General could freely appoint everybody, but now in practice it usually would be upon the approval of the government that people are appointed. Such is life.

There is another problem: What is the nature of this Committee? The Committee has been from the very beginning composed mostly of people who have legal training. It is interesting, at least I believe, that it was not planned to be a body of that kind. There is an interesting provision, paragraph 2 of Article 28, which says that this Committee should be composed of people of high moral character and competence in the field of human rights, and the end of the sentence says that some consideration should be given to the usefulness of some members having legal experience. I believe that this body is not a strictly legalistic lawyers' body, but it should be a human rights body. As it is composed now, it is composed mostly of people who are, as I said, jurists, some of them are teachers of law, some are diplomats, people who belong to government services, and some of them are judges. Now, some diplomatic experience is necessary because the Committee tries to act, it is composed of people from very different regions, with different philosophy and sometimes it is necessary to work out compromises and drafts, that only good diplomats can do. There is one kind of people, one kind of persons that is not within the Committee, and this absence I really regret. We do not have genuine human rights activists, people who have devoted their lives to the work on human rights. And the explanation seems to be quite simple. They usually belong to non-governmental organizations; as a rule, non-governmental organizations, if they are not only a decoration, but if they are really active, tend to be a nuisance to their own governments, and therefore they are not nominated, and if nominated, they tend to be a nuisance to other governments, and they are not elected. So, we really lack some kind of experience in this field, because, as I understand it, progress in human rights is not only in promulgating better laws and correcting laws and having nice constitutions, but there is a deep social change that is sometimes required. Do not interpret me as a Marxist thinking of revolution, but there is some kind of slow work in the field of human rights that has to be done, starting from education. If e.g. you would like to eradicate prejudices;

and prejudices are the basis of discrimination, you have to do something about it, not only in the realm of law. And this is sometimes not understood because the reaction is always a juridical one.

This was quite acute recently because the Committee, among other things, is competent to deliver some kind of general comments on the Covenant, and there was a proposal recently to draft a new comment on Article 6 of the International Covenant. Article 6 deals with the right of life which is considered to be the most important right. It was proposed to consider the existence, deployment, production and use of nuclear arms as a threat to the right of life. Of course, this is a very controversial topic because there are political as well as legal problems. The majority of the Committee - the comment was accepted by consensus - believed that the Committee should react to this kind of threat, to this great danger to humanity by drawing to it the attention of the world community as a Human Rights Committee of independent experts¹. But there were some members saying that the Committee was not competent to deal with this because legally it was not competent to express the opinion that the use of nuclear arms should be declared a crime against humanity. One member of the Committee, a well-known professor from Vienna, Mr. Ermacora, made a strong reservation - he did not want to prevent the consensus from coming into being - saying that as it is now defined the crime against humanity does not cover this. So he believed that the Committee can only interpret existing law in a very narrow sense and not take a kind of a general stand. Then we came again to the discussion, to the problem of what exactly we were. Are we only a kind of court-like body or are we a body that is supposed to do something about human rights?

I should like now to dwell on the most important functions of the Committee, and this is why the title of the lecture is the "roles". I think, the Committee has to play several roles. These are the functions essentially provided for in the Covenant, but of course, practice - though the practice is not very long (the Committee started working in 1978) - has shown that the Committee is performing these roles somewhat differently, than it was possibly envisaged in the Covenant. You study

international organizations and you know quite well that if you want to understand an international organization, it is as important to know its statute as it is to know its subsequent practice, i.e. what happens in the UN is not what was written in the Charter, but what is the interpretation of the Charter during long practice.

The most important thing, according to the Covenant, that the Committee does is the examination of the reports of states. Every state that ratified the Covenant has agreed to submit to the Committee reports on the situation of human rights within its territory. This must be done for the first time after a year has elapsed after ratification, and then subsequently every fifth year. The problem is: What do we do with the reports? There are two schools of opinion: There is one that the Committee can only study the reports, i.e. that it can only listen to the representatives of states that come and introduce the report and read the report. And there is another opinion that the Committee could react to the report saying whether it was good or bad. I simplify this, but this good and bad can have two meanings. One meaning is whether the report was exhaustive, whether it was really well done so that we have a clear picture at least about legislation, and the other meaning - a more complicated and more delicate one - is whether the report is true or false, whether what was written in the report is comparable with the reality, whether it reflects reality, or is the information available to the members of the Committee different. The Committee has had bad reports in various respects. Some countries have sent reports only 2 pages long. Then you can have very long reports that do not say anything. Then we had reports - and this has been a general tendency - that tend to be legalistic in the bad sense. This was the first reaction of many governments, even governments that have a very good human rights record. There are long quotations from the constitution and from the laws: You learn only what is in the books, but you do not know what really happens. And the International Covenant says very expressly in Article 40 which speaks about these reports that in the reports states should deal with problems and difficulties in implementing the Covenant. This is not inviting political self-criticism, but an appeal to share with the

Committee these problems I have referred to already, societal problems in ensuring human rights.

If this is not clear enough, I could easily give an example. E.g. in many countries the whole realm of the family, marriage etc. is covered by provisions strongly influenced by religion. Even in some countries - and this was the case in my country until the second World War - the marriage status and the whole family régime was more or less a church affair. In Lebanon, it is the same thing today as well as in many African countries. According to the Covenant, states have undertaken in Article 23 the obligation to treat both spouses equally, within marriage and in the dissolution of marriage. And as a rule, it is with the divorce that discrimination occurs; usually the husband is favoured. We had e.g. the report from Gambia, an excellent report from a country of half a million inhabitants. It showed how difficult it was to introduce some changes into the society even if the government was willing, because there was a kind of social conservatism, there were political forces within the country who rest on this conservatism, and these are the problems that should be discussed.

Nobody is trying - what is usually the picture - to press governments into the corner and tell them that they are doing something wrong, but there are obligations in the Covenant that require some kind of social action and therefore I think that only passing laws does not help. You know the case of slavery in Mauritania. Mauritania had for a long time maintained that there were no slaves in the country, but they had to admit that they had slaves. And finally the government had to find the courage to tell that slavery - although allowed according to the Koran - in Mauritania was doubtful because of its origin. The state decided to buy all the slaves and set them free. These are the things I am referring to and which should be the contents of the reports. But in 80 % of the cases governments usually quote their legislation and a number of court decisions.

How was this problem, i.e. whether the Committee reacts to the report or not, solved? There is a cryptic part of Article 40 saying that this Committee can communicate to the parties its general comments on the

reports. This was interpreted by the Western members as saying something about the quality of the report in the sense I mentioned. But this was strongly objected too, especially by Eastern European members, who were concerned that the Committee would interfere into internal affairs. Instead of improvising my own point, I should like to present this point as put by the member of the Committee from the German Democratic Republic, Professor Graefrath. He said: "The reporting procedure is not a monitoring system that would give the Committee the power to supervise the implementation of the Covenant in the individual countries. Under Article 40 of the Covenant the state parties only undertake to submit reports. This Covenant makes a clear distinction between the study of state reports in Article 40 and the consideration of communications by state parties under Article 41 which is a procedure to establish violations. In the Covenant the term 'study' has apparently been used to draw a distinction between fact-finding and conciliatory function and the reporting procedure. The preparatory work of the Covenant shows that the general comments cannot be taken as assessments or recommendations directed to individual states."² That is the philosophy shared by some other Committee members. The problem of general comments was - I was not with the Committee then in 1980 - the only crisis in the Committee so far. Its members otherwise work in a very friendly atmosphere and have preserved their dignity even in these turbulent times.

There being no official reactions by the Committee, the only way to see whether a report was received favourably or not is to read the summary records, because all members of the Committee put questions and express their opinions. Already in the question you can recognize what is the attitude of a member. But it is not only questions: Members of the Committee are free to express their opinion about the report and even to compare the report with the situation in the country as they know it. And there are - as Mr. Tomuschat has already said here - numerous sources where you get your information. Of course, the best sources are UN sources, as in the case of Chile where a special rapporteur has been trying to find out what happens in that unfortunate country. You can draw from his conclusions, because he is not supposed to be biased. So, the government will not say that you are just turning to an obscure non-

governmental organization or reading obscure newspapers that are "imperialist" or "Communist", whatever you prefer to say. You have solid information. When one reads that and then reads the report of the Committee to the General Assembly which I mentioned at the beginning, where everything is summarized, you can have a clear impression of what is the opinion of the majority of the Committee members although they have never voted to adopt a decision.

I turn now to what has become of the general comments. The compromise reached in 1980 has turned these general comments, which were probably intended to be more direct comments regarding reports, into something that was not exactly envisaged in the Covenant, into authoritative comments of the provisions of the International Covenant. I do not say "authentic", because the Committee is not empowered to give authentic interpretations, but this is an interpretation coming from a body that is at least supposed to know something about that. Instead of commenting on reports in general, what the Committee does is that it goes through those articles which, according to experience, need some clarification. Where there is some kind of misunderstanding, or where the reports have been silent upon, and there is unanimity or quasi-unanimity within the Committee that some direction should be given. The Committee adopts general comments on these articles. They come sometimes with some provocation from the reports and sometimes without any provocation. E.g. the comment that I mentioned at the very beginning, comment on Article 6, was not introduced by any report, but was something that was initiated within the Committee. Furthermore, in these interpretations all the knowledge acquired by the members of the Committee on the interpretation of the Covenant, but not from the reports only, but from other experience, and especially experience in the examination of the communications by individuals who are affected by violations of human rights (to which I shall turn later), all this experience comes into these comments and thus there is a number of comments dealing with various provisions of the Covenant. Of course, it is highly improbable that there would be comments on very controversial articles. However, through very careful work general comments can be produced on controversial

points such as the freedom of expression (Article 19). In that comment there is a carefully worded sentence which indicates the danger for the freedom of expression if the media are controlled by powerful organizations, which covers both the state and other organizations and takes care of the Western worries that the state in socialist countries is too strong in controlling papers, newspapers, TV stations and radio stations, and the Marxist worries that in the West private ownership of the media - and I do not have to speak about it in the country of Springer - is also a kind of threat. By this sentence, the Committee managed to come to unite these kinds of worries by careful wording, but what it means is that any kind of concentration, any kind of control of the media, is harmful to the enjoyment of this freedom³. Sometimes the Committee acts in a very "superstitious" way. It does not mention things that should be mentioned. Let us have an example: Article 14, para. 5, says that everybody has the right that a court sentence against him is reviewed by a superior court. To all European minds this means exactly what happens in our countries. If I get a penalty of two years in prison, I appeal to a higher court and the judgment can be reviewed. But at the same time, the public prosecutor can appeal and if he does so, there might be a stiffer penalty. To us it sounds quite normal that the second instance is open to the sentenced person, but also to the public prosecutor. To the Anglo-Saxon mind it is different, i.e. there should always be an appeal only for the convicted party, and some states have entered reservations in that respect saying that they preserve the meaning of Article 14 (5) in the sense that there is also an appeal open to the prosecution. There cannot be endless appeals, but there should be one at the disposition of the other side. Some members thought that - if the opinion of the Committee was that the European practice is in accordance with the Covenant - it should be stated clearly. However, other members said that the Committee better not touch it, lest it should invite more states to make reservations. It happens sometimes that things are avoided not because of political reasons, but because of some kind of education attitude.

Time is running, and I should like now to turn to the third important role of the Committee: This is the role it performs under the Optional Protocol which is attached to the International Covenant. Whereas there are 80 signatories to the International Covenant, there are only 30 countries that have ratified the Optional Protocol which gives the right to individuals under the jurisdiction of the latter states to address communications - it is not appeals, nor petitions, it is communications in the wording of the Covenant - to the Human Rights Committee if they think they have been victims of violations of human rights defined in the Covenant. This is a similar function as performed by the European Commission and the European Court of Human Rights - I say similar in order to make things clearer. This Committee has had a number of such communications and what it does - as provided in the rules of procedure and in the Covenant - is to examine the communication first as to its admissibility; and if it finds it admissible then the final product of the Committee is not a judicial decision as with the European Court, but it is something called views or constatations in French. The Committee can only express its view that the given state in the case of a given individual has violated some provisions of the Covenant. These views are then communicated to the state party, then are published, and there is the hope that they will influence the government.

Of course, nobody can invoke these views to squash a sentence or to change something, but these views have been very important, at least from two points of view: First of all, this is where the Committee has gained its practical experience in interpreting the Covenant. Only in cases from practical life you see what the difficulties are, what are all the problems contained in the Covenant in provisions which at the first glance appear very clear and very unambiguous. I cannot mention too many cases, but it is interesting to view sometimes how the jurisprudence of this Committee has evolved in the last period, and I shall quote an example because there is a similar problem in the European Community. In Article 2 the Covenant says that state members shall grant all the rights contained in the Covenant without discrimination as to sex, ori-

gin, race, etc. And there is Article 26 which says that every person is equal before the law and that the rights provided by law should not be given with discrimination based on the same grounds. At the beginning, the opinion of the Committee was that this discrimination clause - and I see now why, because this was an influence of the jurisprudence of the European system - this discrimination clause relates only to rights provided for in the Covenant. If the right was another right provided by law and if there was discrimination, the opinion was that it had nothing to do with it. There was one famous communication which had a happy ending, because after the views the government changed the law. This was the so-called case of Mauritian women⁴. The problem was the following: According to the law of Mauritius, if a man married a foreigner, the woman was entitled to reside in Mauritius. The opposite was not possible: if a woman married a foreigner, he was not entitled to residence. The communication was submitted by a number of Mauritius women. Only one of them had the proper locus standi because she was actually married to a foreigner. The others raised the case because they said that their prospects of marrying foreigners were dimmed. As the Committee is strictly bound only to receive complaints or communications by victims themselves and not by potential victims (there is no actio popularis) it was seized only by the case of that particular lady, and it decided that this was a case of discrimination. But it was a case of discrimination based on Article 26 in conjunction with Article 23, which guarantees the right freely to marry and imposes the duty on the state to protect the family. And it was quite natural that if there is a family where one spouse cannot follow the other, the family was endangered. It was found that Article 26 had to be interpreted in conjunction with the right provided for in the Covenant.

At present, there is a tendency to view it a little bit different. At the last meeting there were three cases, all of them from the Netherlands. All three of them rested on the non-discrimination clause. There was somebody who was trained as a TV-repairman, but had no licence by the Chamber of Commerce, and of course, whenever he tried to repair TV sets for money, he was fined. The second case concerned an invalid who was

receiving assistance from the Dutch Government; this assistance is higher when the recipient is married and supports his or her spouse. The purported victim was not married, but he said that he was living with a lady who was not employed and that he was discriminated against as he refused marriage as an outdated institution. The third case was that of a woman who received unemployment benefits, but these benefits were curtailed because she was married and her husband was employed. This provision of the Dutch law applies only to married women. If a man is unemployed and is married to a woman who is employed, his unemployment benefits are not curtailed. Considering these cases, the Committee noticed that there was a difference between them: The first case was clearly inadmissible. There were some doubts as to the second case, because some of our Latin-American members said that in Latin America the marriage of fact was treated as an official marriage. Nevertheless, it was found that in this case it was not admissible. The third case will very probably be declared admissible, although the right to unemployment benefits does not exist in the Covenant. It was also argued that the decision might affect the whole thing negatively, i.e. that the Dutch Government could easily decide that even men would lose their benefits, but one cannot easily argue such point, because it appears that the reasons for discrimination are more important than the rights. Sometimes you can give drastic examples. Take a very minor privilege: Senior citizens have the right to ride cheaper on trolley cars. If one would say: "All senior citizens except Jews", this would be a clear case of discrimination. Anybody would understand that, although the right to buy a cheaper ticket is not a very important right, there is a case of discrimination. People seem to be more sensitive to such things because of historical reasons; unfortunately, when women are discriminated against, there is no such feeling.

There is another role of the Committee which exists only potentially: Under Article 41 of the Covenant every signatory state may agree by giving a special declaration, that any other signatory state that has given a declaration of this kind can start a procedure before the Committee because human rights in the other country are violated.

So far, only 14 states have given this kind of declaration. No initiative has been made until now with the Committee by a state to declare that there was a violation of the Covenant. Therefore the Committee has no practice in that field. We know only what we can read in Article 41 and the subsequent articles of the Covenant. Therefore I shall not speak about it. I personally believe that in the foreseeable future there will be no practice, no case of this kind, because governments are much more careful when they start these procedures and it is quite obvious that only people themselves and non-governmental organizations can effectively protect human rights now and that, if you leave it to governments, there are many, many other considerations which prevent them from doing so.

This will be, I think, what I had to say without making a formal ending, without being optimistic or pessimistic. The only thing that I had really wanted to say I have said already: the Committee has in these times when human rights are so volatile and so politicized preserved its calm and detachment to decide even on very complicated matters by consensus, which is quite a miracle because lawyers belonging to the same school, the same country, the same tradition very often disagree on many points.

D I S K U S S I O N

Frage: Ich möchte gleich anfangen mit einer Frage, die Sie ganz am Anfang und dann auch am Schluß wieder berührt haben, nämlich die des wundersamen Konsensus, der sich einstellt in dem Gremium von immerhin 18 Experten aus allen Teilen der Welt. Etwas dazu haben Sie schon gesagt, aber es wird sich ja jetzt wieder die Frage des Vorsitzes im Ausschuß stellen, da wüßte ich gern einmal, wie dieser Konsensus zustande kommen wird. Das ist natürlich etwas spekulativ, aber ich kann mir vorstellen, daß es da ganz besondere Schwierigkeiten gibt. Das ist ein ganz präziser Punkt, und vielleicht können Sie uns noch andere Beispiele nennen außer den von Ihnen genannten, wie der Konsensus sich auch in der Zukunft so aufrechterhalten lassen wird, da die Besetzung sich doch ganz erheblich geändert hat. Ich meine, die ersten "founding fathers" haben sich natürlich zusammengestritten, kannten sich, aber mit der jetzt sehr viel heterogeneren Zusammensetzung erhebt sich die Frage: Meinen Sie, daß Sie in der Zukunft auf diesem Wege des Konsensus weiter verfahren können, oder werden sich da nicht möglicherweise andere Strukturen ergeben, vielleicht ergeben müssen? Ich kenne die Schwierigkeiten aus der EG, im Rat diesen Konsensus zustande zu bringen, jetzt mit den 10 Mitgliedern, mit 12 Mitgliedern wird dies noch schwerer sein.

Frage: Ich hätte eine Frage zur Auslegung, Interpretation, die das Committee macht, im Zusammenhang mit Menschenrechtsverletzungen. Ich vermute, daß mein Land, Argentinien, jetzt auch dieses Protokoll ratifiziert hat, und es bestehen besondere Probleme mit dem argentinischen Privatrecht, z.B. haben wir eine ganz besondere Scheidung. Ich würde gern wissen, wie Ihrer Meinung nach die Auslegung des Committee sein wird. Wie erklären Sie sich, daß keine Erklärungen von den Vereinten Nationen kommen?

Frage: I would like to know whether the reports of the Balkan states are satisfactory, I mean the Balkan states as a whole, including all countries on the Balkan Peninsula.

Antwort: The question of the consensus: Consensus is not obligatory. The Covenant and the rules of procedure do not provide for consensus. There is a majority vote with a quorum of 12. But it has been deemed advisable and probably better for human rights that the Committee decide by consensus. So far, it has worked, because people felt under some kind of pressure not to prevent consensus, unless it was really something that they could not agree to. And as you know, consensus is a very flexible matter. You can agree to a decision and then give a kind of explanation, etc. Of course, if the composition of the Committee changes and if there are people who are not willing to adapt, we shall have to revert to voting, which I think in many cases will be unfortunate.

As to the question of interpretation. I am afraid I could give you another lecture on that, but I shall use your concrete example. The Committee has interpreted a number of articles so far, but not Article 23. If Argentina signs the Covenant, it will be in no kind of danger. In a year's time they will present the report, and on the report there will be comments that probably this or that law, this or that system is not in accordance with the Covenant.

There is the problem of sanctions which is very often mentioned. The sanctions that are at the disposal of the Committee are very weak. If you speak about sanctions in human rights, you have the possibilities with the Security Council, the General Assembly, the Commission of Human Rights, etc. Some kind of international pressure is already a sanction. Sanctions are a thing that is very dear to lawyers, but in international life they prove to be sometimes counter-productive. First of all, you can impose sanctions only if the delinquent country really has no political or economic friend. Any kind of punishment has a cost for the punisher: this is very often forgotten. If you sever trade relations, you are also losing. Sanctions are usually not applied as they should be. There is also a psychological problem where you have to leave the realm of international law. There is an essential controversy in punishing undemocratic states. If I am from a country that is

not democratic, I have a government that is violating human rights, and I suffer already. Then I get on top of it an international sanction and I am punished twice, by my own government and by the international community. The last ones to suffer because of these international sanctions are governments. You have a special kind of "Stockholm syndrome" in international relations, people start loving their oppressive government because it is the only one to rally around. This has been studied by the very able Swedish peace researcher Peter Wallensteen⁵. Everybody dealing with sanctions should probably look into these realities. Therefore I think that, basically, the human rights situation can be improved only by forces from within the country. And the international assistance must be carefully geared to influence and assist these forces. Things that now fortunately happen in Latin America are brought about in this way and governments which, in addition to being cruel, are terribly incompetent, crash.

As to Balkan countries: I have not been present when a report from a Balkan country was submitted except the report of my own country, and I am precluded from commenting on the reports of my own country. If you refer to a certain country that does not only belong to the Balkan, but elsewhere, it did not sign the Covenant.

There was also a very pertinent question concerning the NGO's. The non-governmental organizations are very helpful. Of course, they cannot contact the Committee officially, because this would be found offensive by a number of governments, but they can always provide the members of the Committee with the material.

Frage: Dazu habe ich eine Frage. Die praktische Schwierigkeit für die Mitglieder scheint mir darin zu bestehen, daß die Informationen, die Sie bekommen, doch zum Teil relativ zufällig sind. Sie bekommen den Bericht des betreffenden Landes, Sie haben kein eigenes Büro, Sie haben keine Hilfskräfte, jedenfalls nicht in größerem Umfang, Sie haben keine "fact-finding machinery" in Belgrad und wo immer. Wie bekommt man wirklich gute Informationen über sehr viele Staaten dieser Welt, die im Komitee nun beurteilt werden? Denn Sie sollen doch gute Fragen stellen zu einem Bericht, der Sie unter Umständen zum ersten Mal mit der Situa-

tion in dem Land konfrontiert. Das würde ich persönlich als eine außerordentlich schwierige Situation empfinden. Was die persönliche Rolle jedes Mitglieds betrifft - Sie sprachen von der Rolle des Komitees -, so ist es doch in einer relativ schwierigen Situation, weil Sie persönliche Informationen vergleichen müssen mit dem, was im Bericht steht. Und dann haben Sie noch den Repräsentanten des Staates, der Ihnen jetzt Auskunft geben soll. Wie bewältigen Sie das?

Antwort: Sie haben vollkommen recht, es ist sehr schwer und, wie Sie gesagt haben, tendiert dazu, zufällig zu sein. Man weiß über einige Länder etwas aus dem Studium der Bücher, nicht nur der Zeitungen; die internationalen Privatorganisationen liefern schon sehr viel. Der Ausweg ist vielleicht der folgende: Es gibt immer ein paar Mitglieder des Ausschusses, die Bescheid wissen, was in einem Land passiert, und dann übernehmen sie die Initiative, z.B. im Fall von Lateinamerika sind zwei Mitglieder besonders informiert: Herr Prado Vallejo aus Ecuador und Herr Aquillar aus Venezuela. Beide haben eine große Erfahrung in diesen Sachen und kennen sehr genau auch die meisten Persönlichkeiten aus den lateinamerikanischen Ländern. Wenn ich etwas lese, kann ich sie fragen, ob ihr Eindruck der gleiche ist wie meiner. Natürlich gibt es Länder, die ich nicht sehr gut kenne. So glaube ich, daß die Zusammensetzung des Ausschusses mit 18 Personen aus verschiedenen Kontinenten und Regionen auch deshalb gut ist, weil wir wenigstens immer einen oder zwei Herren oder Damen haben, die sehr gut wissen, was vorgeht. Das ist eine Menge Arbeit und erfordert viel Zeit, das alles zu lesen, aber man weiß schon, wo es sich zu konzentrieren lohnt, weil man bereits einen Eindruck hat, wo die Menschenrechtssituation besser oder schlechter ist. Meiner Meinung nach ist es niemals vorgekommen, daß alle Mitglieder des Komitees Ignoranten waren.

Frage: Sie haben aber keine Dokumentation, etwa in Genf oder in New York, auf die Sie zurückgreifen können; irgendein Büro, einen Stab, der für Sie einmal etwas zusammenstellt.

Antwort: Nein, leider nicht. Wir können alle UN-Dokumente konsultieren, das ist möglich. Die kann das Sekretariat besorgen. Die Leute vom Sekre-

tariat, die uns bedienen, bedienen noch 23 andere Ausschüsse auf dem Gebiet der Menschenrechte. Natürlich kann man sie nicht überfordern. Sie können auch nicht die Dokumente vermitteln, die nicht von den Vereinten Nationen stammen, und das sind die wichtigsten.

Frage: Ich möchte gern auch noch einmal nachhaken. Ich habe den Eindruck gewonnen, daß Ihre Quellen also eigentlich hauptsächlich die der Vereinten Nationen und die der Ausschußmitglieder, Ihrer Kollegen, sind, also eigentlich Quellen außerhalb Ihres Landes. Benutzen Sie auch Quellen innerhalb Ihres Landes, z.B. die Informationen, die Ihnen die diplomatischen Missionen liefern können? Dies ist keine Frage nur an Sie persönlich, sondern wie machen es denn die anderen 17 Mitglieder?

Antwort: Das ist eine interessante Frage. Ich weiß nicht, wie weit sie zu Ihrem Ministerium gehen und Auskünfte und Nachrichten verlangen über gewisse Länder. Ich jedenfalls tue es nicht. Ich glaube, daß meine Position eines unabhängigen Mitgliedes das erfordert, daß ich nicht zu viel mit dem Außenministerium arbeite. Aber ich vermute, daß es manche andere tun. Das wäre schon eine gewisse Art offizieller Information meiner Regierung, und ich versuche, diesen Einfluß zu vermeiden. Natürlich lese ich die Zeitungen in meinem Lande usw. Aber Ihr Eindruck ist richtig, daß es mehr oder weniger chaotisch ist, weil es keine Stelle gibt, wo man das alles konsultieren kann. Obwohl einige NGO's sehr gute, objektive Arbeit leisten in vielen Ländern. Man weiß sehr wohl, welche NGO's besser oder schlechter sind in welchem Bereich, welchen man trauen kann oder nicht.

Frage: Meinen Sie, das sollte so bleiben, oder sollte anzustreben sein in Zukunft, diesen Informationsfluß doch etwas zu strukturieren?

Antwort: Vielleicht mit dem Hohen Kommissar für Menschenrechte. Man könnte bei diesem internationalen Ombudsman wenigstens ein Datenzentrum einrichten.

Frage: Ist der Kommentar über Kernwaffen und das Recht auf Leben nicht juristisch zu kühn?

Antwort: Der Ausschuß hat vorsichtig gesagt, daß nicht nur die Anwendung, sondern auch die Vorbereitungen als ein Verbrechen gegen die Menschheit erklärt werden sollten. Aber ein so vorsichtiger Wortlaut ist schon als radikal angesehen worden. Ich habe einige Herren in Heidelberg gesehen, wie die ihren Kopf schütteln; sie meinten, daß das Komitee das überhaupt nicht tun sollte. Aber wir dachten, daß es uns erlaubt ist, manchmal eine Art Appell abzugeben, um die Frage unter diesem Gesichtspunkt zu betrachten.

Frage: Sie haben davon gesprochen, daß man die Konvention im Lichte der Realität interpretieren müsse. Das wäre genau mein Punkt. Entspricht es wirklich der Realität, hier einen internationalen Konsens darüber oder etwas Ähnliches anzunehmen, da doch sowohl viele Staaten der westlichen Welt und auch viele sozialistische Staaten ihre gesamten Verteidigungskonzeptionen für den extremen Notfall darauf aufbauen?

Antwort: Ja, das ist eine Warnung, und die Meinung war, daß man eigentlich echt anti-nuklear sein soll und nicht gegen eine bestimmte Strategie, nicht für oder gegen die SS 20 oder die Pershing Raketen. Und es gibt einige Gründe dafür, daß die Nuklearwaffen ernst juristisch betrachtet werden sollten. Das war ein Versuch, die Sache wieder aufs Tapet zu bringen, obwohl in diesem Kommentar gesagt wird, daß die Staaten etwas unternehmen sollten, um sich abzurüsten. Es ist ein Text, der sehr vorsichtig vorbereitet wurde.

Frage: I guess my question is more theoretical, because on the geographical level it seems to me that human rights violations should be considered not on an inter-state geographical level, right around the world, but human rights unlike the EWG-Vertrag seem to be different in that there is a general understanding what is a human right, what should be a human right. And your response to a question was the Committee will not engage in that track of problems because in Argentina the husband and wife are equally discriminated against. It still seems to me that could be a human rights violation, especially when applied to a country of the size of Luxemburg or Liechtenstein where people will have international implications. Will the Committee then in such a situation say: Well, we will not voice an opinion to that situation because it is discrimination, but it is discrimination on an equal basis?

Antwort: I can follow you to a certain extent. But the Committee cannot invent rights that do not exist in the Covenant. And the Covenant does expressly give you the right to marry if you are of marriageable age, but it does not say how many times you may marry. So, it has to be interpreted within a kind of an "ordre public" and since this kind of "ordre public" does not only exist in Argentina but in many other countries, this will be reflected in the opinions of many members of the Committee. As my former example showed, we consider it quite normal that the public prosecutor can appeal against the sentence; it seems to be quite normal that many religions command that if you marry you should stay married for the rest of your life. You cannot interpret it beyond some kind of consensus. You have cultural differences. According to the Protocol, the communication to the Committee can be sent only by the victim himself. The Committee discovered that very often victims are in prison and cannot do anything about themselves. It is even unknown where they are. The right to submit communications was recognized to close relatives. There was a brother-in-law who raised this, and a member from a Moslim country said: A brother-in-law is no relative whatsoever. Religious differences are reflected in such matters. What I wanted to say was that we interpreted the right on a certain kind of cultural social basis and you cannot force a society to do these changes abruptly because there is a kind of common understanding. That was my point. It would be a little bit too artificial to impose from far away a kind of progressive thinking unless it is a clear violation of an explicit right provided for in the Covenant.

Frage: This is just a comment, not a question. But I am very surprised that the interpretation that is drawn from the Protocol and the Covenant is always restrictive. I think that you were speaking about Article 2 and Article 26 and you said that just with respect to the right covered in the Covenant there could be discrimination. In Article 23 you are speaking about the right to marriage and not about a right to marry again. I do not understand why the interpretation is so restrictive.

Antwort: Well, this is my interpretation. There is no general comment on Article 23. I might be wrong. I would be very happy if we had the report of Argentina and we could discuss this matter. But I suspect the view

of the Committee would be in that case restrictive because it would be considered unrealistic in relation to all states with a Catholic tradition to expect such a change. My example on Article 26 was showing that the interpretation was not restrictive. At the beginning it was restrictive, now it is not. It is considered to be revolutionary by some members because we cover rights that are not in the Covenant.

Bemerkung: So habe ich das auch verstanden, daß wir eigentlich ein Gegenbeispiel haben. Da haben wir den ersten Schritt, der konservativ ist, wenn Sie so wollen, und der zweite dynamische Schritt öffnet sich. Ober Artikel 23 kann man natürlich schwer spekulieren, wenn sich das Problem noch nicht stellt. Möglicherweise wird die Entwicklung so verlaufen, wie Sie das angedeutet haben, nämlich vorsichtig, und dann später vielleicht etwas offener.

Bemerkung: Das hängt vor allen Dingen, wenn ich das sagen darf, von der Entwicklung eines internationalen "ordre public" ab als Bestandteil der Interpretation auch einer solchen Konvention, die wandlungsfähig ist. Es kann durchaus sein, daß im Laufe der Praxis der nächsten zwanzig oder vierzig Jahre sich hier andere Elemente ergeben, dann ist vielleicht das Problem für uns nicht mehr lösbar, aber es ist für die nächste Generation lösbar.

Frage: Sie gehen davon aus, daß es einen international gleichen Standard von Menschenrechten gibt oder ein internationales Einverständnis darüber. Ich erinnere mich an einen Besuch beim Europäischen Gerichtshof für Menschenrechte, wo es um die Bezahlung der Dolmetscherkosten in einem ordentlichen Gerichtsverfahren ging; das wurde von einigen als falsch angesehen. Meiner Meinung nach heißt es, mit Kanonen auf Spatzen zu schießen, hier gleich mit der Menschenrechtskonvention zu kommen, während in manchen Entwicklungsländern die Menschen vor Hunger sterben. Wie zieht sich eine solche Diskussion durch Ihre Kommission? Gibt es da auch unterschiedliche Standpunkte? Meine zweite Frage: Sie sind doch sicherlich auch Experte für den Ostblock. Sie haben als Erfolgsbeispiel Mauritius genannt, offenbar eine Regierung, die auch kooperativ war. Haben die Stellungnahmen der Kommission je Einfluß gehabt auf die Menschenrechtsbewegung im Ostblock?

Ich kann mir vorstellen, daß die Berichte gar nicht veröffentlicht werden dort, sondern daß sie höchstens von Regierungsstellen gelesen werden.

Antwort: There are two parts in your question. Firstly, you are right that countries are at different stages of development as to human rights. I personally believe human rights is an endless process. We shall always find new rights that we need. Sometimes what is felt as a violation of human rights in the Federal Republic is trivial in another country, where there are more important problems. By serving in the Committee you get a sense of proportion. But there is another thing. This argument is often abused by some people who try to degrade civil and political rights. In the human rights field there is no "entweder - oder", no "either - or". You have always régimes that say: "Let us wait for a while to develop, to have more to eat, have more industry, and then luxurious things such as freedom of opinion will come later." They will never come. The insistence on one kind of right at the expense of another is wrong. You have to take everything into account. E.g. if you speak about the right to life, infant mortality is an important aspect. One should not only be protected against capital punishment. After all, few people die in countries where capital punishment exists. If I remember right, Argentina and Uruguay have no capital punishment, but the military there killed so many people easily. You need a sense of proportion, but should not abuse it for ideological purposes, to say always "but": "We do not have the freedom of expression, but we have a low infant mortality", etc.

As to your second question: First of all, no country from Eastern Europe has signed the Optional Protocol. Thus, the Committee does not receive any complaints. The only thing that can be done is to discuss their reports. And I must say that they are very careful, very anxious to present good reports and send delegations to answer questions. All persons in these countries that can read the summary records, can find out about the reactions of the Committee. Since a part of the legitimation of Eastern European governments is human rights, something is done after that. If you remember the Helsinki Conference, there was a new Soviet constitution which enumerated all rights contained in the Final Act. If you feel under the obligation to legitimize your rule by referring to human rights, there must be a kind of a feedback. And there have been

things that have changed or improved. There is always a careful study. The great importance attached to the consideration of the reports by those governments shows that they are aware of their international obligations and image.

Frage: Haben Sie den Eindruck, daß von den Sitzungspapieren sehr viel ins Innere dieser Länder - der Sowjetunion z.B. - gelangt?

Antwort: I do not know really, I suppose that anybody who uses any kind of UN depositary library can get hold of it. He can photocopy it. And as far as I know, the reactions of our Committee on some legal provisions in some countries of this kind have been widely known.

Frage: Quelles sont les initiatives ou les mesures du Comité quand il a pris connaissance que les droits humains étaient blessés? Concrètement, quelles sont les initiatives du Comité vis-à-vis de l'état qui a blessé les droits humains. Et puis, je me demande quant à la discrimination entre homme et femme et quand on lit dans la presse que les droits sont quotidiennement blessés, donc je me demande si le rôle du Comité ne reste un peu dans la théorie. Quelle est la force, quelles sont les mesures avec lesquelles on fait face à toutes les attaques aux droits humains?

Antwort: Le Comité n'est pas l'organe unique qui s'occupe des droits de l'homme. Sa compétence est très limitée. Il y a d'autres organes qui peuvent faire davantage, en particulier la Commission qui réagit aux violences massives des droits de l'homme. Notre Comité ne peut avoir sa propre initiative, cette dernière appartenant à quelqu'un d'autre. C'est l'état qui peut déclencher une procédure d'après l'article 41. Il n'y a que 14 états qui ont signé la déclaration nécessaire. Ce sont des individus qui nous adressent à cause d'une violence personnelle. En ce cas nous pouvons décider seulement si Monsieur ou Madame Untel ont été blessés dans leurs droits. Et notre constatation a une force morale, une force de pression, mais il y a des gouvernements, des pays où cette force a été transformée dans une force politique; il y a des lois qui furent changées à cause d'une constatation. Même en Uruguay je ne crois pas que le Comité ait renversé la dictature. Nous avons eu beaucoup de décisions sur des choses affreuses qui se sont passées en Uruguay. Au début,

Le gouvernement n'a pas réagi, mais après 10 ou 12 décisions on a pu remarquer que les personnes concernées furent mises en liberté ou transportées dans des prisons moins affreuses, ou ont obtenu la permission de quitter le pays. Il faut d'une manière générale tenir compte du fait que dans le domaine des droits de l'homme on ne peut pas faire beaucoup à l'échelle universelle. Peut-être en Europe, où les pays sont très proches et qui ont la même philosophie, politique, culture, mais sur le plan universel c'est très difficile et plus limité.

Professor Will: Vielen Dank ...

Footnotes

- 1 CCPR/C/21/Add. 4 of November 14, 1984.
- 2 B. Graefrath, Trends emerging in the practice of the Human Rights Committee, Bulletin of the GDR Committee for Human Rights, 1/180, p. 15 ff.
- 3 General Comment 10 (19). GAOR, 38th Sess., Suppl. 40, Annex VI.
- 4 Views on Communication No. R.9/35 (Shirin Aumeeruddy-Cziffra et al. v. Mauritius). GAOR, 36th Sess., Suppl. 40, Annex XIII.
- 5 Cf. P. Wallensteen, Characteristics of economic sanctions, Journal of Peace Research 1968, p. 248 ff.

EUROPA – INSTITUT

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Der Aufbaustudiengang „Europäische Integration“,

der im Fachbereich Rechtswissenschaft der Universität des Saarlandes eingerichtet worden ist und vom Europa-Institut betreut wird (§ 1 der Studienordnung), bietet Hochschulabsolventen aller Länder die Möglichkeit, über ihre Fachausbildung hinaus einen vertieften wissenschaftlichen Einblick in die rechtlichen und wirtschaftlichen Grundlagen der Europäischen Integration sowie deren historische und politische Zusammenhänge zu gewinnen.

Vorlesungen, Seminare und Anleitungen zu persönlichen Forschungsarbeiten, die von deutschen und ausländischen Professoren sowie von Fachleuten aus den Europäischen Gemeinschaften und Organisationen angeboten werden ermöglichen eine umfassende und praxisnahe Fortbildung. Das arbeits- und prüfungsintensive Programm soll in gleichem Maße die wissenschaftliche und praxisorientierte Auseinandersetzung mit den Problemen der Europäischen Gemeinschaften fördern.

Das Europa-Institut wurde im Jahre 1951 an der Universität des Saarlandes gegründet, die sich als Universität im Grenzland von jeher der Idee des Zusammenschlusses der europäischen Völker besonders verbunden gefühlt hat. Seit dem Wintersemester 1980/81 hat sich das Europa-Institut die Durchführung des Aufbaustudiengangs „Europäische Integration“ erneut zur Aufgabe gestellt.

Mit dieser für die Bundesrepublik einmaligen Einrichtung will die Universität des Saarlandes einen Beitrag zur Förderung des Nachwuchses für internationale Organisationen, europäische Institutionen und für die mit internationalen Fragen befaßten nationalen Verwaltungen leisten.

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Der Aufbaustudiengang „Europäische Integration“ umfaßt ein in sich abgeschlossenes Studienprogramm in der Dauer von zwei Semestern (Studienjahr). Das Studienjahr beginnt Mitte Oktober und endet Mitte Juli.

Die Vorlesungen und Seminare über die juristischen Aspekte der europäischen Integration bilden den Schwerpunkt des Lehrprogramms. Sie werden interdisziplinär durch historisch-politische und ökonomische Vorlesungen ergänzt. Die Lehrveranstaltungen werden in der Regel in deutscher Sprache abgehalten.

Der Studiengang wird mit Prüfungen abgeschlossen, aufgrund derer das „Zertifikat über europäische Studien“ verliehen wird.

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auf Wirtschaft und Politik der Integration mit jährlich jeweils 3 Mindeststunden.

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Geschichte der Integration,
Europäisches Wirtschafts-, Steuer- und Verfahrensrecht,
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Voraussetzungen für die Verleihung des „Zertifikats über europäische Studien“ sind:

1. ein schriftlicher Antrag des Bewerbers,
2. ein abgeschlossenes Hochschulstudium,
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4. die erfolgreiche Teilnahme am Studiengang, d.h. der Bewerber muß, verteilt auf zwei Semester, insgesamt an wenigstens 18 Grundkursstunden pro Woche und wenigstens 14 Wahlkursstunden teilgenommen haben und jede besuchte Veranstaltung mit einer mündlichen oder schriftlichen Prüfung erfolgreich abgeschlossen haben.

Zusätzlich ist der Erwerb zweier Seminarscheine erforderlich. Die Prüfungen finden jeweils am Ende eines Semesters statt.

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